

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 535 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

MAHAVIR FULCHAND JAIN

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner
MR KT DAVE, AGP for Respondent Nos.1 to 3
MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 16/03/2000

ORAL JUDGEMENT

#. District Magistrate, Ahmedabad, passed an order on January 24, 2000, in exercise of powers under Section 3 (1) of the Prevention of Blackmarketing & Maintenance of Supplies of Essential Commodities Act, 1980 ("the PBM Act" for short), detaining the detinue under the

provisions of the PBM Act.

#. The grounds of detention indicate that the detaining authority was satisfied that the activities of the detainee were detrimental to smooth supply of essential commodities like petrol. It was found that the activities included mixing of solvent in petrol and therefore, the authority considered the possibility of resorting to less drastic remedy for preventing the detainee from continuing his activities. But ultimately found that the alternative less drastic remedies may not prove to be as efficacious as detention under the PBM Act and that looking to the activities of the detainee, he was required to be immediately prevented from continuing his activities. Therefore, the detention under the PBM Act was the only efficacious remedy that can be resorted to. The petitioner was, therefore, detained under the PBM Act.

#. The detainee challenges the order of detention on various grounds. However, learned counsel Mr. Prajapati has placed reliance on affidavit-in-reply filed on behalf of the Union of India. Mr. Prajapati submitted that admittedly the representation dated 31st January, was received by the Central Government on 10th February, 2000 through the State Government and the same was decided on 1st March, 2000 along with several other representations. Mr. Prajapati submitted that no explanation is tendered on behalf of the Union of India for the lapse of time between 10th February, 2000 and 1st March, 2000 in considering the representation. This delay of about 19 days is detrimental to the right of the detainee of making an effective representation and therefore, continued detention would be vitiated. He therefore, urged that the petition may be allowed.

#. Mr. K.T.Dave, learned AGP, representing the State of Gujarat and the detaining authority and Ms. P.J.Davawala, learned Addl. Standing Counsel for the Union of India have opposed this petition.

#. Having regard to the rival side contentions, the question that requires to be addressed to by this Court is whether there is delay on the part of the Union of India in considering the representation made on behalf of the detainee, and if so, whether it is explained, and if yes, whether that explanation is acceptable?

#. There is no dispute about the fact that the representation dated 31st January, 2000 addressed to the State Government was forwarded by the State Government to

the Central Government vide letter dated 7th February, 2000, which was received by the Central Government on 10th February, 2000. The Central Government considered the representation along with parawise remarks and rejected the representation on 1st March, 2000. All that is stated in the affidavit-in-reply is that six other persons detained in the same case had also made representations which were received by the department and the department considered them all together. Under no circumstances, it can be said that the lapse of a period between 10th February, 2000 to 1st March, 2000 is even attempted to be explained. When the representation of other detenues were received and why they were not immediately decided is not stated. Why the representation of the present detainee was not attended to immediately is not explained and therefore, this inordinate delay in considering the representation has resulted into infringement of right of the detainee of making an effective representation. The continued detention, therefore, would be vitiated and the petition, therefore, deserves to be allowed.

#. This petition is allowed. The impugned order of detention dated January 24, 2000 is hereby quashed and set aside. The detainee - Mahavirbhai Fulchandbhai Jain is hereby ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

pirzada/-